1714.

SUPREME COURT OF THE UNITED STATES.

No. 121.

THEOPHILUS BEATTY, PLAINTIFF IN ERROR,

vs.

THOMAS ROSS.

IN ERROR TO THE SUPREME COURT OF FLORIDA.

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J. & G. S. Gideon, printers.

Writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the justices of the supreme court of the State of Florida, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said supreme court before you, between Theophilus Beatty and Thomas Ross, a manifest error hath happended, to the great damage of the said Theophilus Beatty, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this second day of February, in the year of our Lord one thousand eight hundred and forty-seven, and of the independence of the United States the seventy-first year.

[L S.]

M. D. PAPY,
Clerk supreme court of Florida.

The return to the within writ appears by the transcript hereto annexed.

M. D. PAPY, *Clerk.*

July 22d, 1847.

Citation.

UNITED STATES OF AMERICA, *ss:*

To Thomas Ross, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Florida, wherein Theophilus Beatty is plaintiff and you are defendant in error, to shew cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Thomas Douglas, chief justice of the supreme court of the State of Florida, this second day of February, A. D. eighteen hundred and forty-seven, and seventy-first year of American independence.

[L. S.]

THO. DOUGLAS,
Chief justice of the supreme court of the State of Florida.

Came to hand 3d day of February, 1847.
A. A. FISHER, *Sheriff Sup. Court.*

Executed by serving a copy of the within on defendant, 4th day of February, 1847. A. A. FISHER, *Sheriff Sup. Court.*

Sheriff's fees—Service and copy 0.75
Sixty miles travel 2.40

$3.15

Pleas before the honorable the supreme court of the State of Florida, at the Capitol, in the city of Tallahassee, at January term, in the year one thousand eight hundred and forty-seven.

Be it remembered that heretofore, to wit, on the fifth day of January, A. D. eighteen hundred and forty-six, came Theophilus Beatty, by his attorney, and filed, in the clerk's office of the supreme court for the State of Florida, a certain record, in the words and figures following, to wit:

"Pleas at the court house, in the town of Monticello, Jefferson county, before the circuit court of the middle circuit, for the county of Jefferson, on Thursday, the sixth day of November, in the year one thousand eight hundred and forty-five.

Be it remembered that heretofore, to wit, on the fourth day of February, in the year 1845, came Thomas Ross, by his attorneys, and filed, in the clerk's office of the superior court of the district of Middle Florida, in and for the county of Jefferson, a præcipe, which præcipe is in the words and figures following:

In Jefferson superior court, April term, 1845.

THOMAS ROSS, vs. THEOPHILUS BEATTY. } Assumpsit, damages two thousand dollars.

The clerk will please issue the original as above directed, 4th February, 1845. HAWKINS & HARRISON,
Plaintiff's Attorneys.

And on the same day and year last aforesaid, a summons ad respondendum was sued out of the said clerk's office against said defendant, which writ, with the endorsement and return thereon made, is in the words and figures following:

Territory of Florida, to the marshal of the middle district, greeting:

We command you to summons Theophilus Beatty, if he be found within the county of Jefferson, personally to be and appear before the judge of our superior court for said county, district aforesaid, at the court house in Monticello, on the third Monday in April next, being the first day of our next term, to answer Thomas Ross in an action of assumpsit, damages two thousand dollars, and have then there this writ.

Witness William Budd, clerk of our said court, this fourth day of February, A. D. 1845, and sixty-ninth year of American independence.
WM. BUDD, *Clerk*.

Endorsement.

Came to hand, February 6th, 1845. J. G. CAMP, *Marshal*.
By deputy W. R. TAYLOR.

Return.

Duly executed, by serving a copy on Theophilus Beatty, February 8th, 1845. J. G. CAMP, *Marshal*.
By deputy W. R. TAYLOR.

And on the same day, to wit, on the said 4th day of February, in the year last aforesaid, came the plaintiff, by his attorneys, and filed, in said clerk's office of said court, his declaration against the defendant, which declaration is in these words:

In Jefferson superior court, middle district of Florida, April term, 1845.

Jefferson county, to wit: Thomas Ross complains of Theophilus Beatty, who was summoned to answer the said plaintiff of a plea of trespass on the case upon promises. For that, whereas the said defendant, on the first day of January, in the year one thousand eight hundred and forty-three, at Casa Bianca, in the county aforesaid, made a certain note in writing, commonly called a promissory note, bearing date the day and year last aforesaid, and then and there delivered the said note to the said plaintiff, by which said note the said defendant promised, on the first day [of] January next thereafter, to pay to said plaintiff, or order, eight hundred and eighty dollars, with interest at ten per cent. By reason whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay the said plaintiff the said sum of money in the said note specified, according to the tenor and effect of the said note; and being so liable, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff the said sum of money in the said note specified, according to the tenor and effect of the said note. And whereas, also, the said defendant afterwards, to wit, on first day of January, in the year of our Lord one thousand eight hundred and forty-four, at the place aforesaid, was indebted to the said plaintiff in the sum of one thousand dollars, lawful money of the United States of America, for money before that time lent and advanced by the said plaintiff to the said defendant, and at the special instance and request of the said defendant; and for other money by the said plaintiff before that time paid, laid out, and expended for the said defendant, and at the like request of the said defendant; and for other money by the said defendant before that time had and received, to and for the use of the said plaintiff; and being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the

same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money in this count mentioned, when the said defendant should be thereunto afterwards requested. And whereas, also, the said defendant afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, accounted, together with the said plaintiff, of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiff, and then and there being in arrear and unpaid, and upon such accounting, the said defendant then and there was found to be in arrear and indebted to the said plaintiff in the further sum of one thousand dollars, of like lawful money as aforesaid; and being so found in arrear and indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested. Nevertheless, the said defendant (although often requested, &c., to wit, on the day when the said note became due and payable, according to the tenor and effect thereof, and oftentimes since, to wit, at the place aforesaid,) hath not yet paid the said several sums of money above mentioned, or any of them, or any part thereof, to the said plaintiff, but to pay the same, or any part thereof, to the said plaintiff, *but to pay the same, or any part thereof, to the said plaintiff*, the said defendant hath hitherto altogether refused, and still doth refuse, to the damage of the said plaintiff of two thousand dollars; and therefore the said plaintiff brings suit, &c.

HAWKINS & HARRISON,
Plaintiff's Attorneys.

And at another day, to wit, on the 30th day of October, 1845, came the plaintiff's attorney, Richard Harrison, esq., and filed an affidavit of default, for want of a plea in said cause, which affidavit is in the words and figures following:

THOMAS ROSS,
vs.
THEOPHILUS BEATTY.

This day came R. Harrison, attorney for the plaintiff in the above stated case, and says, on oath, that this day he searched in the office of the clerk of the circuit court, of Jefferson county, for a plea in this case, and finds none; wherefore he prays judgment of the court against said defendant accordingly. R. HARRISON.

Sworn to and subscribed before me, this 30th day of October, 1845.
CRAVEN G. FIFE, *Clerk*.

And at another day, to wit, on the 5th day of November, 1845, came the defendant, in his own proper person, and filed his petition to remove said cause from this court; which petition, with the affidavit thereto, is in the words and figures following:

State of Florida, middle circuit, Jefferson circuit court, November term, 1845.

THEOPHILUS BEATTY, defendant, ats. THOMAS ROSS, plaintiff. } In assumpsit, on promises by note, &c.

And now, on this 3d day of November, 1845, on the first calling of said case on the docket of said court, comes the said Theophilus, defendant, and says, he shows to said court that said court should not proceed to render judgment in said case, or further entertain or hold cognizance or jurisdiction thereof, but should order and direct said case to be remanded to the circuit court of the United States, having jurisdiction thereof, because he, the said defendant, says said suit was commenced on the 4th February, 1845, by summons, issued out of the clerk's office of the superior court of the middle district of the Territory of Florida, in and for said county of Jefferson, returnable to and before said superior court on the third Monday in April, 1845; that said plaintiff filed his declaration in said cause in said superior court, of the 4th of February, 1845, and said defendant caused his appearance to be entered in said cause at the same April term, 1845, of said superior court, (which, while Florida was such territory, had jurisdiction as a circuit court of the United States,) and thereupon said cause was continued; and the defendant says, that when said writ was issued as aforesaid, and ever since, this defendant was, and has been, and now is an alien, born out of the United States, to wit, in Ireland, and a subject of the crown of Great Britain and Ireland, and that he hath never been naturalized or admitted, or become a citizen of the United States of America, and that the matters in dispute in said case exceed in value five hundred dollars, exclusive of costs; and this defendant further avers, said Thomas Ross, plaintiff, was and is a citizen of the United States, and a citizen of the State of Florida, residing therein.

And this defendant avers, that the affidavit made in said cause by plaintiff's attorney on the first day of the present term of this court, and the docketing said cause in this court, doth not entitle said plaintiff to judgment in said cause by default, for want of a plea in this court, because that defendant says no order of said superior court of said territory has ever been legally made or entered in said cause remanding or transferring said cause into this court, so as to give this court cognizance or jurisdiction thereof; and the defendant was not, and is not, bound to plead in said cause in this court, and is not in default on account thereof; and this the said defendant is ready to verify. Wherefore this defendant petitions and prays for the order of this court to remand and remove said cause to the said circuit court of the United States, having jurisdiction thereof.

T. BEATTY.
WESTCOTT & BROCKENBROUGH,
For defendant.

Sworn to and subscribed, Nov. 5th, 1845.

C. G. FIFE, *Clerk*.

And on the same day last mentioned, to wit, on the 5th day of November, 1845, came the defendant, by his attorney, and filed his bill of exceptions to the opinions and decisions of the court, and is in these words, to wit:

Jefferson circuit court, November term, 1845.

THEOPHILUS BEATTY, defendant,
ats.
THOMAS ROSS, plaintiff.

Be it remembered, that on the first calling of the docket in this court, November 3d, 1845, defendant, by his attorney, moved the court to remand and remove said cause to the circuit court of the United States for Florida, on the ground that the defendant was an alien, and that the cause had been improperly transferred to and placed on the docket of this court, and asked leave until next day to file his petition; which motion to file his petition was allowed. And thereupon, November 4th, 1845, said defendant filed his said petition in the words following, to wit:

State of Florida, middle circuit, Jefferson circuit court, November term, 1845.

THEOPHILUS BEATTY, defendant,
ads.
THOMAS ROSS, plaintiff.
In assumpsit. On promises by note, &c.

And now, on this third day of November, 1845, on the first calling of said case on the docket of said court, comes the said Theophilus, defendant, and says, he shows to said court that said court should not proceed to render judgment in said case, or further entertain or hold cognizance or jurisdiction thereof, but should order and direct said case to be remanded to the circuit court of the United States having jurisdiction thereof, because he, the said defendant, says said suit was commenced on the 4th of February, 1845, by summons issued out of the clerk's office of the superior court of the middle district of the Territory of Florida, in and for said county of Jefferson, returnable to and before said superior court on the third Monday in April, 1845; that said plaintiff filed his declaration in said cause in said superior court of the 4th February, 1845; and said defendant caused his appearance to be entered in said cause at the same April term, 1845, of said superior court, (which, while Florida was such territory, had jurisdiction as a circuit court of the United States.) And thereupon said cause was continued. And the defendant says, that when said writ was issued as aforesaid, and ever since, this defendant was, and has been, and now is, an alien, born out of the United States of America, to wit, in Ireland, and a subject of the crown of Great Britain and Ireland, and that he hath never been naturalized, or admitted, or become a citizen of the United States of America, and that the matters in dispute in said case exceed in value five hundred dollars, exclusive of costs. And this defendant

further avers, said Thomas Ross, plaintiff, was, and is, a citizen of the United States and a citizen of the State of Florida, residing therein. And this defendant avers, that the affidavit made in said cause, by plaintiff's attorney, on the first day of the present term of this court, and the docketing said cause in this court, doth not entitle said plaintiff to judgment in said cause by default, for want of a plea in this court, because that defendant says no order of said superior court of said Territory has ever been legally made or entered in said cause remanding or transferring said cause into this court, so as to give this court cognizance or jurisdiction thereof; and the defendant was not, and is not, bound to plead in said cause in this court, and is not in default on account thereof; and this the said defendant is ready to verify. Wherefore this defendant petitions and prays for the order of this court to remand and remove said cause to the said circuit court of the United States, having jurisdiction thereof.

T. BEATTY.

Sworn and subscribed, Nov. 5th, 1845.

C. G. FIFE, *Clerk*.

And defendant also filed a newspaper, called the "Florida Star," a newspaper published at Tallahassee, Florida, 2d September, 1845, containing a notice published by order of the honorable Samuel J. Douglas, judge of the superior court of the middle district of Florida, admitted by the parties to have been published; which printed order is in the following words, viz:

CHAMBERS, *middle district of Florida:*

Whereas, it is made known to me that a judge has been elected for the district of Middle Florida: It is therefore ordered, that the clerks of the superior courts of said district deliver over to those properly authorized to receive them all papers appertaining to suits now pending in courts in which the State tribunals have exclusive jurisdiction; also all such (at the option of the plaintiff) as they may have concurrent jurisdiction with the Federal courts; and retain in their office all papers in those suits in which the Federal courts have exclusive jurisdiction.

SAM'L JAMES DOUGLAS,
Judge U. States, district Middle Florida.

A true copy from the minutes.

R. T. BIRCHETT, *Clerk*.
By JOHN B. KEEN, *D. C.*

TALLAHASSEE, *September 2d*, 1845.

And thereupon said petition and motion were heard and argued, and said defendant offered in open court to give sufficient security for his entering in such circuit court, on the first day of its session, copies of the process against him, and the other requirements of the law in such case made and provided. And said defendant also offered to show that said judge of said superior court, though duly commissioned by the

President of the United States, and acting as judge of the superior court of the territory at the time of the admission of the territory as a State, had never taken the oath prescribed by the 11th section of the 6th article of the constitution of the State of Florida, which was admitted by the plaintiff's counsel. It was admitted by defendant's counsel that defendant had, previously to the institution of said suit, made application to be admitted a citizen of the United States, but that the time had not elapsed since said application to allow his admission under the act of Congress. After argument the court refused the prayer of the petition, and, defendant not filing any plea, judgment by default is ordered and rendered; and said defendant praying this bill of exceptions to said decision, the same is signed, sealed, and ordered to be filed as a part of the record in said case. THOS. DOUGLAS, [SEAL.]

November 5th, 1845. *Judge, &c., &c.*

And now, at this day, to wit, at a circuit court of the middle circuit, continued and held for Jefferson county, at the court-house, Monticello aforesaid, on Thursday, the sixth day of November, in the year one thousand eight hundred and forty-five, came the parties, by their attorneys, and the prayer of the petition filed in this case by defendant is denied; and said defendant having excepted to the decision of the court in such denial, and filed his bill of exceptions thereto, and defendant not filing any plea or defence to said action, judgment by default is ordered, for want of a plea, with costs, the damages to be assessed by the clerk; and the said clerk having assessed said damages at eleven hundred and seven dollars and thirty-three $\frac{1}{3}$ cents, besides the costs, it is therefore considered by the court that the said Thomas Ross do recover of the said Theophilus Beatty the sum of eleven hundred and seven dollars and thirty-three and one-third cents, for his damages by him sustained by reason of the non-performance of the promises in said declaration assessed by the clerk as aforesaid; and also the sum of three dollars and eighty-five cents for his costs by him about his suit in this behalf expended. And the defendant in mercy, &c.

Whereupon the said defendant appealed from said judgment to the supreme court of the State of Florida.

The following is a copy of the promissory note upon which this action was founded:

$880. CASA BIANCA, 1*st January*, 1843.

On the 1st of January next, I promise to pay to Thomas Ross, or order, eight hundred and eighty dollars, with interest at ten per cent.

T. BEATTY.

On the 16th day of November, 1845, the defendant filed the following appeal bond, viz:

Know all men by these presents, that we, Theophilus Beatty and William Bailey and William Bellamy, are held and firmly bound unto Thomas Ross, plaintiff, in the just and full sum of two thousand two hundred and fifty dollars, lawful money of the United States, to be paid

unto the said Thomas Ross, his certain attorney, his executors, administrators, or assigns; for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this fifteenth day of November, in the year one thousand eight hundred and forty-five.

The condition of the above obligation is such, that whereas, at a circuit court held for Jefferson county, in the middle circuit of the State of Florida, at Monticello, Jefferson county aforesaid, on the sixth day of November, A. D. 1845, in an action of assumpsit between the above named Thomas Ross, plaintiff, and the above bound Theophilus Beatty, defendant:

It was considered by the said court that the said Thomas Ross should recover against the said Theophilus Beatty eleven hundred and seven dollars and thirty-three and one-third cents for his damages sustained by occasion of the defendant's non-performance of the promises and assumptions in the declaration mentioned; and three dollars and eighty-five cents for his costs expended in said suit, &c.; from which judgment the said Theophilus Beatty hath appealed to the supreme court of the State of Florida. If, therefore, the said Theophilus Beatty shall prosecute the said appeal with effect, or pay and satisfy the judgment aforesaid, and all such costs and damages as shall be awarded against him in case the said judgment shall be affirmed, then this obligation to be void, else to remain in full force and virtue.

T. BEATTY, [L. S.]
WILLIAM BAILEY, [L. S.]
WILLIAM BELLAMY. [L. S.]

Sealed and delivered, and security approved.

C. G. FIFE, *Clerk*.

Whereupon, by order of the court made on the last day of the court, and by consent of plaintiff's counsel, a supersedeas is allowed.

STATE OF FLORIDA, *Middle circuit, Jefferson county, to wit:*

I, Craven G. Fife, clerk of the circuit court for the county of Jefferson, in the middle circuit of the State of Florida, do hereby certify, that the foregoing ten pages contain a true transcript of the record and proceedings in a certain action of assumpsit lately depending in said circuit court between Thomas Ross, plaintiff, and Theophilus Beatty, defendant, with all things touching the same as fully and whole as they now exist among the records of my office.

In testimony whereof I hereto set my hand and annex the seal of the [SEAL.] said court, this twenty-sixth day of November, in the year of our Lord one thousand eight hundred and forty-five.

CRAVEN G. FIFE, *Clerk*.

And afterwards, to wit, on the 6th day of January, A. D. 1846, came the said Theophilus Beatty, appellant, by his attorneys, and filed in the clerk's office of said supreme court his assignment of errors, of which the following is a copy, to wit:

In supreme court of Florida.

THEOPHILUS BEATTY
vs.
THOMAS ROSS.

The plaintiff at this day comes and assigns the following, viz:

1st. The court erred in overruling the objections touching jurisdiction, and in refusing the prayer of the petition to remove the cause into the circuit court of the United States.

2d. The court erred in giving judgment for plaintiff below.

CARMACK & MAXWELL.

And at another day, to wit, on the 21st day of January, A. D. 1846, being of the January term, A. D. 1846, of said supreme court, by consent of parties, the said case was continued until the next term of said court.

And afterwards, to wit, at a supreme court for the State of Florida, continued and held at the Capitol, in the city of Tallahassee, on Tuesday, the nineteenth day of January, A. D. 1847.

Present: Hon. Thomas Douglas, chief justice.
" Thomas Baltzell,
" George S. Hawkins, } Associate justices.
" George W. Macrae,

THEOPHILUS BEATTY, appellant,
vs. } No. 5.
THOMAS ROSS, appellee.

This cause was this day heard upon the transcript of the record of the judgment aforesaid, and the arguments of counsel; but because the court is not yet advised of its judgment to be given in the premises, time is taken to consider thereof. During the argument of this cause, the honorable Thomas Douglas, who presided upon the trial of this cause in the court below, retired from the bench.

And afterwards, to wit, at a supreme court for the State of Florida, continued and held at the Capitol, in the city of Tallahassee, on Monday, the twenty-fifth day of January, A. D. 1847.

Present: Hon. Thomas Douglas, chief justice.
" Thomas Baltzell,
" George S. Hawkins, } Associate justices.
" George W. Macrae,

THEOPHILUS BEATTY, appellant,
vs. } No. 5.
THOMAS ROSS, appellee.

Upon an appeal from a judgment of the circuit court of the middle circuit of Florida, in and for Jefferson county, rendered on the 6th day of November, A. D. 1845, whereby it was considered that that said appellee recover against said appellant the sum of $1,107 33⅓ for his damages, and also 3\frac{85}{100}$ for his costs, &c.

This day came the parties, by their attorneys, and the transcript of